

X-16949M

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February 16, 2010  
Date

PATENT APPLICATIONIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Hornback, W.J., et al. )  
 For : HISTAMINE H3 RECEPTOR )  
       AGENTS, PREPARATION )  
       AND THERAPEUTIC USES )  
 Docket No. : X-16949M )  
 Application No. : 10/599,488 )  
 Patent No. : US 7,632,857 )

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENTINDICATED AT ISSUANCE

(37 C.F.R. § 1.705)

Mail Stop Issue Fee  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Sir:

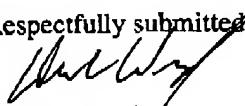
Applicants hereby submit a Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. § 1.705 in the above-referenced issued patent. Applicants hereby authorize the Commissioner to charge any required fees to Deposit Account No. 05-0840. Applicant's note this petition is filed on February 16, 2010 (which follows the federal holiday of February 15, 2010) such that a response due on February 15, 2010 is timely when filed on February 16, 2010. By this paper, Applicants hereby petition the U.S. Patent and Trademark Office for reconsideration of additional patent term adjustment of 22 days based on the facts provided herein. This request is submitted in view of the decision by the U.S. District Court decision in Wyeth v. Dudas (D.D.C. 2008) on September 30, 2008 and the decision of Wyeth v.

X-16949M

Kappos (CAFC, 2009-1120) of January 7, 2010.

This request for patent term adjustment raises new issues and is filed within two months of the date the patent issued. The facts supporting this filing are as follows: The instant application was issued as a patent on December 15, 2009 with notification that the Patent Term Adjustment under 35 USC § 154(b) is 0 days. According to the provisions of 37 C.F.R. § 1.702(b), Applicants are entitled to Patent Term Adjustment for the failure of the Office to issue the patent within three years after the date on which the application was filed. Applicants submit the proper amount of Adjustment should be calculated as follows. The filing date of the application under 35 U.S.C. § 371 was September 29, 2006, therefore the date 3 years from filing is September 29, 2009. Thus, the number of days past 3 years is calculated by counting from September 30, 2009 to December 15, 2009, including the day of issuance, which is 77 days. Applicants submit that proper applicant delay due to filing of an RCE should be calculated as follows: an RCE was filed on June 2, 2009 and a Notice of Allowance was mailed on July 27, 2009. Therefore, applicant delay can be calculated starting on June 3, 2009 to July 27, 2009, including July 27, 2009, which is 55 days. Thus, subtracting time attributable to applicant delay of 55 days, from the USPTO delay of 77 days, results in 22 days of eligible USPTO delay. Applicants are entitled to this adjustment because none of the other provisions described in 37 C.F.R. § 1.702(b)(2)-(5) apply to the instant application. The patent is not subject to a terminal disclaimer. In summary, Applicants respectfully hereby timely request that the Patent Term Adjustment be increased from that reported on the Determination of Patent Term Adjustment under 35 USC § 154(b) to 22 days in accordance with 35 USC §154(b)(1)(B).

Respectfully submitted,



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